IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 26556 of 2006(J)

PETITIONERS:

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1. SASANKALAL P.K.,
   SREEKRISHNA VILASOM, S.V.PURAM P.O.,
   VARKALA.

2. REETHA SASANKALAL,
   SREEKRISHNA VILASOM, S.V.PURAM P.O., VARKALA.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS:

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1. VARKALA MUNICIPALITY, REPRESENTED BY
   ITS SECRETARY, VARKALA.

2. THE VARKALA MUNICIPAL COUNCIL,
   REPRESENTED BY ITS CHAIRMAN, VARKALA.

BY ADV. SRI.J.S.AJITHKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 26556 OF 2006

Dated this the 6th day of March, 2007

JUDGMENT

Heard Sri.B.S. Swathi Kumar, counsel for the petitioner and Sri.J.S. Ajith Kumar, Standing Counsel for the respondents.

The grievance of the petitioners who applied for a building permit before the 1st respondent-Municipality is that by Ext.P4 the Municipality has rejected their application. The reason stated in Ext.P4 is that going by the plan, the proposed building is to be constructed on an area coming within the DTP scheme. Admittedly the DTP scheme has not been implemented in spite of the elapse of several years since the same was notified.

I am of the view that the issue is covered by the principles laid down in **Padmini V. State of Kerala** [1999 (3) KLT 465] and the Supreme Court in **Raju Jethmalani & others V.State of Maharashtra & others** [(2005) 11 SCC 222]. Under these circumstance, I dispose of the Writ Petition issuing the following directions and granting relief to the petitioner.

The petitioner will submit undertaking before the 1st respondent-Municipality undertaking in the form of an affidavit stating very clearly that in case a notification under Section 4(1) of the Land Acquisition Act

is promulgated by the respondents within 18 months from the date of issuance of permit by the Municipality to the petitioner, the petitioner will surrender the building to be constructed on the strength of the permit without claiming any compensation under the Land Acquisition Act. Once such an affidavit is received from the petitioner, the Municipality will issue permit to the petitioner provided the plan is otherwise in order. In other words, the proposal to acquire the property of the petitioner for implementation of the DTP scheme will not be a reason to reject the application for building permit. Ext.P4 is quashed so as to enable the Municipality to issue permit. Fresh orders on the permit application should be passed within two weeks of receiving the affidavit. It is made clear that even after the expiry period of 18 months noted above, if it becomes necessary for the respondents to acquire petitioners' property for any genuine public purpose they are free to do so. But under such a contingency, the petitioners will be entitled for adequate compensation under the provisions of Land Acquisition Act.

PIUS C. KURIAKOSE, JUDGE

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